



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 5, 2022

VIA ECF

The Honorable Jesse M. Furman
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Schulte v. United States et al.*, Nos. 21 Civ. 4042, 4800, 5061, 5168, 5173, 5213, 5313, 5554, 5722, 5851, 5871, 6504 (JMF)

Dear Judge Furman:

I represent Defendant United States of America in the above-referenced cases brought by Plaintiff Joshua Schulte. I respectfully request a one-month extension of the time for the United States to respond to the complaints.

Plaintiff filed the complaints in June and July 2021 asserting claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and the Federal Tort Claims Act ("FTCA") arising out of his conditions of confinement at the Metropolitan Correctional Center ("MCC"). On November 10, 2021, the Court issued an order of service in the above-referenced cases in which it denied Plaintiff's claims for injunctive relief and declined to issue an order under *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997), or to order service on Officer Edge. Accordingly, Plaintiff's only remaining claims are his FTCA claims against the United States.

The United States was served with the complaints in these actions, via email, on November 17, 2021. Accordingly, the United States's responses to these complaints are due on January 18, 2021. Despite service occurring in November, the complaints appear to have been misplaced until last week and the undersigned counsel was assigned to represent the United States in these actions on January 3, 2021.

The United States anticipates that it will file a motion to dismiss the complaints on the grounds that Plaintiff (i) has failed to properly present and exhaust his administrative remedies under the FTCA, *see* 28 U.S.C. §§ 2401(b), 2675; and (ii) lacks a private analogue under New York law, *see Watson v. United States*, 865 F.3d 123, 134 (2d Cir. 2017) ("a plaintiff's cause of action must be comparable to a cause of action against a private citizen recognized in the jurisdiction where the tort occurred"). Nevertheless, the United States respectfully requests that it be permitted until February 17, 2022, to respond to the complaints, which time will permit the United States to thoroughly investigate the Plaintiff's claims.

This is the United States' first request for an extension of its deadline to respond to the complaints in these actions. The undersigned did not attempt to obtain Plaintiff's consent for this request given his incarceration and *pro se* status. The parties do not have any outstanding deadlines or scheduled Court appearances in these cases.

I thank the Court for its consideration of this request.

Respectfully,

DAMIAN WILLIAMS
United States Attorney
Southern District of New York

By: /s/ Tara Schwartz
TARA SCHWARTZ
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2633/2743
Email: tara.schwartz@usdoj.gov

The Government is granted an extension, but only to February 3, 2022.
The Clerk of Court is directed to terminate 21-CV-4042, ECF No. 14,
and to mail a copy of this endorsed letter to Plaintiff.

SO ORDERED

A handwritten signature in black ink, appearing to be "Jan 6", written over the date.

January 6, 2022